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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LATIA ALEXANDER, individually as heir
of ISIAH T. WILLIAMS, and in her
capacity as Special Administrator of the
Estate of ISIAH T. WILLIAMS,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a political subdivision of
the State of Nevada; KERRY KUBLA, in his
individual capacity; BRICE CLEMENTS, in
his individual capacity; ALEX GONZALES,
in his individual capacity; RUSSELL
BACKMAN, in his individual capacity;
JAMES ROTHENBURG, in his individual
capacity; JAMES BERTUCCINI, in his
individual capacity; MELANIE O'DANIEL,
in her individual capacity and DOES I-XX,
inclusive,

Defendants.

KERRY KUBLA,

Counterclaimant,

vs.

LATIA ALEXANDER in her capacity as
Special Administrator of the Estate of
ISIAH T. WILLIAMS,

Counterdefendant.

Case Number:

2:24-cv-00074-APG-NJK

DEFENDANT MELANIE O'DANIEL'S
ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT (ECF NO. 26)

MARQUIS AURBACH

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1 Defendant Melanie O'Daniel ("Defendant O'Daniel"), by and through her counsel,
2 Marquis Aurbach, hereby answers Plaintiff's First Amended Complaint (ECF No. 26) on
3 file herein, admits, denies and alleges as follows:

4 **PARTIES, JURISDICTION AND VENUE**

5 1. Defendant O'Daniel admits the allegations contained in paragraphs 1, 2, 3, 4,
6 5, 6, 7, 8, 9, 10, 13, 15 and 16 of the Plaintiff's First Amended Complaint.

7 2. Defendant O'Daniel is without sufficient knowledge to form an opinion as to
8 the truth of Plaintiff's allegations contained in paragraphs 11, 12 and 14 of Plaintiff's First
9 Amended Complaint, and therefore deny the remaining allegations.

10 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11 3. Defendant O'Daniel denies the allegations contained in paragraphs 17, 20,
12 21, 22, 24, 25, 35, 36, 39, 40, 41 and 43 of the Plaintiff's First Amended Complaint.

13 4. Defendant O'Daniel admits the allegations contained in paragraphs 18, 19,
14 26, 27 and 31 of the Plaintiff's First Amended Complaint.

15 5. Defendant O'Daniel is without sufficient knowledge to form an opinion as to
16 the truth of Plaintiff's allegations contained in paragraphs 23, 28, 29, 30, 32, 33, 34, 37, 38
17 and 42 of the Plaintiff's First Amended Complaint, and therefore deny the remaining
18 allegations.

19 **FIRST CLAIM FOR RELIEF**

20 **(VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. §1983 ET SEQ. –**
21 **FOURTH AMENDMENT)**

22 6. Defendant O'Daniel is without sufficient knowledge to form an opinion as to
23 the truth of Plaintiff's allegations contained in paragraphs 44, 45 and 47 of the Plaintiff's
24 First Amended Complaint, and therefore deny the remaining allegations.

25 7. Defendant O'Daniel admits the allegations contained in paragraphs 46, 49,
26 50, 51 and 58 of the Plaintiff's First Amended Complaint.

27 8. Defendant O'Daniel denies the allegations contained in paragraphs 48, 52,
28 53, 54, 55, 56, 57, 59 and 60 of the Plaintiff's First Amended Complaint

SECOND CLAIM FOR RELIEF

**(VIOLATION OF FEDERAL CIVIL RIGHTS 42 U.S.C. §1983 ET SEQ. –
FOURTEENTH AMENDMENT)**

9. Defendant O'Daniel is without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 61 and 62 of the Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

10. Defendant O'Daniel denies the allegations contained in paragraphs 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72 of the Plaintiff's First Amended Complaint.

THIRD CLAIM FOR RELIEF

(VIOLATIONS OF NEVADA CONSTITUTION/CONSTITUTIONAL TORT)

11. Defendant O'Daniel is without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 73, 74, 75 and 78 of the Plaintiff's First Amended Complaint, and therefore deny the remaining allegations.

12. Defendant O'Daniel admits the allegations contained in paragraphs 76, 77, 79, 84 and 87 of the Plaintiff's First Amended Complaint.

13. Defendant O'Daniel denies the allegations contained in paragraphs 80, 81, 82, 83, 85, 86, 88, 89 and 90 of the Plaintiff's First Amended Complaint

FOURTH CAUSE OF ACTION

(ASSAULT AND BATTERY/WRONGFUL DEATH AND SURVIVORSHIP)

14. Defendant O'Daniel is without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 91 and 92 of the Plaintiff's First Amended Complaint, and therefore denies the remaining allegations.

15. Defendant O'Daniel denies the allegations contained in paragraphs 93, 94, 95, 96, 97, 99 and 100 of the Plaintiff's First Amended Complaint.

16. Defendant O'Daniel admits the allegations contained in paragraph 98 of the Plaintiff's First Amended Complaint.

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FIFTH CAUSE OF ACTION

**(INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS –
WRONGFUL DEATH AND SURVIVORSHIP)**

17. Defendant O’Daniel is without sufficient knowledge to form an opinion as to the truth of Plaintiff’s allegations contained in paragraphs 101 and 102 of the Plaintiff’s First Amended Complaint, and therefore deny the remaining allegations.

18. Defendant O’Daniel denies the allegations contained in paragraphs 103, 104, 105, 106, 107, 110 and 111 of the Plaintiff’s First Amended Complaint.

19. Defendant O’Daniel admits the allegations contained in paragraphs 108 and 109 of the Plaintiff’s First Amended Complaint.

SIXTH CAUSE OF ACTION

(NEGLIGENCE – WRONGFUL DEATH AND SURVIVORSHIP)

20. Defendant O’Daniel is without sufficient knowledge to form an opinion as to the truth of Plaintiff’s allegations contained in paragraphs 112 and 113 of the Plaintiff’s First Amended Complaint, and therefore denies the remaining allegations.

21. Defendant O’Daniel admits the allegations contained in paragraphs 114, 119 and 120 of the Plaintiff’s First Amended Complaint.

22. Defendant O’Daniel denies the allegations contained in paragraphs 115, 116, 117, 118, 121 and 122 of the Plaintiff’s First Amended Complaint.

SEVENTH CAUSE OF ACTION

(MONELL CLAIMS)

23. Defendant O’Daniel is without sufficient knowledge to form an opinion as to the truth of Plaintiff’s allegations contained in paragraphs 123 and 130 of the Plaintiff’s First Amended Complaint, and therefore denies the remaining allegations.

24. Defendant O’Daniel admits the allegations contained in paragraphs 124, 125 and 137 of the Plaintiff’s First Amended Complaint.

25. Defendant O’Daniel denies the allegations contained in paragraphs 126, 127, 128, 129, 131, 132, 133, 134, 135, 136 and 138 of the Plaintiff’s First Amended Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's suit fails to state a claim for relief as she failed to allege a violation of a right, privilege, or immunity secured by the United States Constitution or by the laws of the United States.

SECOND AFFIRMATIVE DEFENSE

Defendant O'Daniel is protected by qualified immunity.

THIRD AFFIRMATIVE DEFENSE

The complained of acts of Defendant O'Daniel was justified and privileged under the circumstances.

FOURTH AFFIRMATIVE DEFENSE

At all times mentioned in Plaintiff's First Amended Complaint, Defendant O'Daniel acted in good faith belief that her actions were legally justifiable.

FIFTH AFFIRMATIVE DEFENSE

LVMPD did not implement an unconstitutional custom, practice, or policy.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's claims of constitutional violation are unsupported in both fact and law, as Plaintiff has not alleged sufficient basis from which a constitutional interest might arise in conjunction with the alleged actions.

SEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's causes of actions against Defendant O'Daniel sound in negligence, no recovery can be predicated upon 42 USCA §1983.

EIGHTH AFFIRMATIVE DEFENSE

Any injuries allegedly sustained by Plaintiff were the result of Plaintiff/Decedent Isaiah T. Williams' own negligence and/or actions.

NINTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover punitive or exemplary damages against Defendant O'Daniel on her §1983 claims or any state law claims.

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TENTH AFFIRMATIVE DEFENSE

The state law claims and each of them are barred by NRS 41.032.

ELEVENTH AFFIRMATIVE DEFENSE

The claims and each of them are barred by Plaintiffs' failure to plead those claims with particularity.

TWELFTH AFFIRMATIVE DEFENSE

Defendant O'Daniel reserves the right to amend these Affirmative Defenses as discovery unfolds and new information is discovered.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's state law claims are capped pursuant to NRS 41.035.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's state law claims involve discretionary functions for which Defendant O'Daniel is immune pursuant to NRS 41.032.

WHEREFORE, Defendant O'Daniel prays for judgment as follows:

1. That Plaintiff takes nothing by virtue of her First Amended Complaint on file herein, that the same be dismissed with prejudice;
2. For an award of reasonable attorney fees and costs of suit incurred in the defense of this action; and
3. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 23rd day of September, 2024.

MARQUIS AURBACH

By s/Craig R. Anderson
Craig R. Anderson, Esq.
Nevada Bar No. 6882
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANT MELANIE O'DANIEL'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 23rd day of September, 2024.

☒ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

☒ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants: n/a

s/Sherri Mong
an employee of Marquis Aurbach

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